

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No.
) 4:19-cr-06063-SMJ-01
Plaintiff,)
) January 9, 2020
v.) Richland, Washington
)
MONICA PESINA, (01),) Contested Motion Hearing
)
Defendant.) Pages 1 to 56

BEFORE THE HONORABLE SALVADOR MENDOZA, JR.
UNITED STATES DISTRICT COURT JUDGE

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1 (January 9, 2020; 1:48 p.m.)

2 THE COURTROOM DEPUTY: Please rise.

3 (Call to Order of the Court.)

4 THE COURT: Please be seated.

01:48:10 5 THE COURTROOM DEPUTY: Matter before the Court is *United*
6 *States v. Monica Pesina*, Cause No. 4:19-cr-06063-SMJ-1. Time
7 set for a motion hearing.

8 Counsel, please state your presence for the Court and
9 record.

01:48:23 10 MS. VAN MARTER: Stephanie Van Marter and Task Force
11 Officer Brazeau present. Good afternoon.

12 THE COURT: Good afternoon.

13 MR. PECHTEL: Good afternoon, Your Honor. Adam Pechtel
14 on behalf of the defendant, Monica Pesina, who is present and in
01:48:35 15 custody.

16 THE COURT: Good afternoon to both of you.

17 Counsel, sorry for the late start. I understand this is
18 a motion by the defendant.

19 Mr. Pechtel, are there any preliminary comments you'd
01:48:48 20 like to make?

21 MR. PECHTEL: Yes, Your Honor.

22 As an initial matter, I believe the Government would
23 like to exclude witnesses from the courtroom. So I would ask
24 both of our witnesses to exit the courtroom at this time.

01:49:01 25 THE COURT: That makes sense.

1 If you are a witness testifying in this matter, would
2 you please wait outside.

3 (Witnesses excluded from the courtroom.)

4 MR. PECHTEL: The defense would propose that we do the
01:49:15 5 following for this hearing: Initially, that we take appropriate
6 evidence, testimony from the witnesses; and then the defendant
7 would like to address the rebuttable presumption. If the Court
8 rules that the rebuttable presumption has been overcome by the
9 defendant, then we can proceed to a second stage of argument
01:49:35 10 where the Government, as the party with the burden, argues for
11 detention; and then the defendant would then respond to the
12 Government's argument.

13 THE COURT: Very well. That makes sense. Okay.

14 MR. PECHTEL: I don't have any further initial remarks.
01:49:51 15 If the Government wants to make any initial remarks --

16 THE COURT: Ms. Van Marter?

17 MS. VAN MARTER: No, Your Honor. That's fine with the
18 Government.

19 THE COURT: Okay. Then why don't we call the witnesses.

01:49:59 20 MR. PECHTEL: The defense would call Lena Samorano.

21 (Witness approached.)

22 THE COURT: Right over here. That's okay. Right over
23 here.

24 THE COURTROOM DEPUTY: And before you get up to the
01:50:32 25 step, just turn and face me and raise your right hand.

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1 LENA SAMORANO,
2 called as a witness on behalf of the Defendant, having first
3 sworn or affirmed, testified under oath as follows:

4 THE WITNESS: I do.

01:50:47 5 THE COURTROOM DEPUTY: Okay. Have a seat. There's a
6 step. The chair does not roll -- you have to pull it -- so you
7 don't roll down the little step. And make sure we're on here.

8 THE WITNESS: I'm on camera, too.

9 THE COURTROOM DEPUTY: That's just for her to see your
01:51:03 10 face because she can't turn. And there's water for you. And
11 when you're comfortable, please state your first and last name,
12 and spell them both for the record.

13 THE WITNESS: Lena Samoran; L-E-N-A, S-A-M-O-R-A-N-O.

14 THE COURT: Go ahead, Counsel.

01:51:16 15 MR. PECHTEL: Thank you, Your Honor.

16

17 DIRECT EXAMINATION

18 BY MR. PECHTEL:

19 Q What city and state do you currently reside in?

01:51:22 20 A Kennewick, Washington.

21 Q And how long have you resided in the Tri-Cities area?

22 A Approximately ten years.

23 Q And do you recognize the defendant sitting at the table
24 over here?

01:51:33 25 A Absolutely.

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1 Q And who is that?

2 A My best friend.

3 Q What is her name?

4 A Monica Angelic Pesina.

01:51:40 5 Q Okay. How long have you known Monica?

6 A Fifteen years.

7 Q You knew her when you weren't living in the Tri-Cities
8 area?

9 A Um-hmm.

01:51:47 10 Q Can you answer "yes" or "no" --

11 A Yes.

12 Q -- just for the court reporter?

13 A Yes. Sorry.

14 Q What other locations did you know Monica from?

01:51:56 15 A I met her at Pine Lodge.

16 Q And where is Pine Lodge?

17 A A women's correction center.

18 Q Do you know if Monica has any children?

19 A Three.

01:52:08 20 Q And do you know of the approximate ages of those three
21 children?

22 A 22 or 23 -- I forget our older kids' age -- um, Angelic is
23 going to be 12 this year, so she's 11; and Biggie is 9 -- I
24 mean, oops, Joshua is 9.

01:52:30 25 Q And have you helped Monica in raising the children?

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1 A They were with me for a month before she got picked up.

2 Q And following her arrest, have you assisted with helping
3 the children attend appointments and various other things?

4 A Since she's been picked up, they've been with their Aunt
01:52:57 5 Katie.

6 Q Now, you do have a criminal history; is that correct?

7 A Correct.

8 Q And your most recent convictions are from when?

9 A 2015. But apparently I didn't get convicted of my -- one
01:53:12 10 of them that I got charged with in 2015. The last one would be
11 2017.

12 Q So you were charged with two offenses in state court in
13 2015?

14 A Um-hmm.

01:53:20 15 Q And you pled guilty to both of those?

16 A Yes.

17 Q And you were sentenced in 2016 on one of them and 2017 on
18 the other one?

19 A Yes.

01:53:30 20 Q Let's also talk about -- you've struggled with drugs in the
21 past.

22 Is that fair to say?

23 A Yes.

24 Q Okay. Can you explain to the judge when you say -- when I
01:53:41 25 said "struggle with drugs," what you meant when you agreed to

1 that statement?

2 A Oh, yes. Um, I've been an addict since I was approximately
3 12, and I started using meth when I was 15. And, um, I've been
4 in and out of institutions since I was 15. Um, and honestly, it
01:54:07 5 wasn't until -- I'm going to start crying -- it wasn't until the
6 last time I got in trouble and the judge told me that he had
7 faith in me to be the mom that I needed to be to my kids, and he
8 awarded me a program called FOSA, and it was the best thing that
9 ever happened to me, because this year I will celebrate four
01:54:35 10 years clean and sober and living a productive and being a
11 productive member of society.

12 Due to my addiction, I lost four of my children. Um, one
13 child still does not talk to me. Um, I don't have a
14 relationship with that child or that grandchild. Um, but today
01:54:58 15 I have a strong relationship with my other -- all my other
16 children and with my oldest grandson.

17 Q You indicated that the judge sentenced you to a program
18 called DOSA?

19 A FOSA, Family Offender Sentencing Alternative.

01:55:15 20 Q FOSA. And what did that entail?

21 A Um, that entailed -- it's kind of like you're in prison
22 outside of -- you know, you're kind of in prison at home.
23 You're not allowed to -- you have to write down -- basically you
24 can't have anybody at your home without your PO's, your
01:55:36 25 probation officer's permission; you have to let them know

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1 anytime that you're leaving; um, they're allowed to stop by and
2 give you a UA at any given time. Um, and it's that way for --
3 and you go and you have phases; Phase I, Phase II, and Phase
4 III. And, um, once you phase out, you graduate the program and
5 you're done.

01:55:59

6 Q Did you attend drug treatment during that period?

7 A Yes.

8 Q Where did you attend treatment at?

9 A At First Steps.

01:56:06

10 Q Okay. And was that inpatient or outpatient?

11 A Outpatient.

12 Q How frequently did you go to outpatient treatment?

13 A I started with IOP, which was three days a week; and then I
14 dropped down to OP, which was once a week.

01:56:21

15 Q Did you find that helpful in remaining clean and sober?

16 A Yes.

17 Q What other things have you found helpful in achieving
18 sobriety over the past -- you mentioned it's going to be four
19 years this year.

01:56:34

20 A I go to -- I go to church twice a week, and I go to
21 meetings; I have a sponsor; I work the steps. And I, um --
22 every year I've -- except this last year; I got to go spend
23 Thanksgiving with my family in California, but usually I go
24 volunteer and I feed the homeless.

01:56:55

25 Q Now I want to turn our attention back to Monica.

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1 Do you know whether Monica struggles with drugs or alcohol?

2 A Yes, she does.

3 Q Can you describe to the judge what you know about her
4 struggles with using drugs or alcohol?

01:57:13 5 A We have both -- we were -- we used together. And in 2005,
6 we got locked back up together in 2005, um, and then she -- we
7 both started using again in 2012 together.

8 Q And after you got -- well, what's your --

9 A She was clean until 2012, from 2000 -- we got out of prison
01:57:51 10 in 2006 -- or '7, and she was clean from the time she got out
11 until 2012.

12 Q And just, so we can talk about a specific date, what is
13 your clean date?

14 A My clean date is July 27th, 2016.

01:58:05 15 Q Okay. Following that day, did you remain in contact with
16 Monica?

17 A Well, yeah. Of course. I have -- I have her niece. My
18 daughter is her blood niece.

19 Q To your knowledge, after you got clean, did Monica continue
01:58:25 20 to use drugs?

21 A There was a couple times I thought she was, but -- and, I
22 mean, of course she was, because we didn't have contact together
23 all the time.

24 Q Now, you mentioned several tools that were at your disposal
01:58:42 25 that you used to help you get clean, including -- I think you

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1 indicated you attend meetings and you have a sponsor and so on
2 and so forth.

3 A Um-hmm.

4 Q Did you find the support of other people who had gone
01:58:52 5 through similar experiences as you helpful in --

6 A Absolutely.

7 Q -- getting sober or clean?

8 A Absolutely.

9 Q And if the judge were to allow Monica to get released,
01:59:04 10 would you be supportive of her in trying to get clean?

11 A Oh, absolutely. It would be a prayer answered.

12 Q What kinds of things would you encourage Monica to -- to do
13 and help her to do?

14 A Outpatient treatment, go to church with me.

01:59:25 15 Q And maybe -- maybe she would or maybe she wouldn't go to
16 church with you. Would you introduce her to any of the
17 meetings --

18 A I would take her to NA meetings.

19 Q Okay. In your opinion, do you think that Monica poses a
01:59:39 20 risk of danger to the public if she were to be released?

21 A Absolutely not.

22 Q And in your opinion, do you believe that Monica poses a
23 risk of fleeing and not showing up for court?

24 A Absolutely not. I know she'd show up for court.

01:59:53 25 MR. PECHTEL: No further questions.

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1 THE COURT: Thank you.

2 Ms. Van Marter.

3

4

CROSS-EXAMINATION

01:59:58

5 BY MS. VAN MARTER:

6 Q Good afternoon.

7 A Hi.

8 Q Congratulations --

9 A Thanks.

02:00:04

10 Q -- on upcoming four years of sobriety.

11 A Thanks.

12 Q I just have a series of questions for you.

13 You had indicated the most -- at least talking just about
14 your most recent criminal history, where you were convicted, I
15 believe, 2016 and 2017 --

02:00:18

16 A Um-hmm.

17 Q -- what types of offenses were those?

18 A I think they were the theft charges.

19 Q Could they also have been related to the delivery,
20 manufacture of methamphetamine?

02:00:30

21 A Unless that's when they closed my case. Because they
22 didn't close my -- my case wasn't closed until I graduated in
23 2017. So maybe that's the one you're talking about.

24 Q Were you arrested for --

02:00:46

25 A No, I was never arrested again.

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1 Q Let me just -- I just -- for that previous offense, were
2 you at one point arrested for the manufacture and distribution
3 of methamphetamine?

4 A I was arrested in 2015. I don't recall getting arrested
5 after that.

02:00:59

6 Q Okay. But that was for the offense of manufacture and
7 distribution --

8 A Um-hmm.

9 Q -- of methamphetamine?

02:01:05

10 A Yeah.

11 Q Approximately how much methamphetamine?

12 A Um, they -- it was like a quarter ounce. It was just a
13 little bit.

14 Q And that was during the time that you had indicated that
15 you were still spending time with Ms. Pesina?

02:01:15

16 A Um-hmm.

17 Q And you two had relapsed together?

18 A In 2012.

19 Q When you were still using from 2012 until 2015 --

02:01:26

20 A Um-hmm.

21 Q -- at the time of your arrest?

22 A Um-hmm.

23 Q And were you still seeing Ms. Pesina and using with
24 Ms. Pesina during that time period?

02:01:33

25 A Yeah.

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1 Q And your drug of choice was what?

2 A Meth.

3 Q And what was Ms. Pesina's at the time?

4 A Meth.

02:01:40 5 Q Methamphetamine?

6 A Um-hmm.

7 Q And your history with Ms. Pesina, you said you've known
8 each other for 15 years; is that right?

9 A Um-hmm.

02:01:47 10 Q Did that relationship begin or involve, in the beginning,
11 drug use?

12 A Nope.

13 Q When did you begin using drugs with Ms. Pesina?

14 A Um, not until after -- one -- one of our releases out of
02:02:01 15 prison.

16 Q Okay. I think you had said that you had relapsed or had
17 began --

18 A In 2005.

19 Q -- in 2005 with her.

02:02:09 20 A Um-hmm.

21 Q And then you both went and served some time together?

22 A Yeah. We met in prison.

23 Q Okay. So you were using prior to going to prison? When
24 did you meet in prison, what year?

02:02:18 25 A 2004.

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15

1 Q 2004.

2 And when were you released that year?

3 A 2005. She had already -- she was already there, and I got
4 there and met her.

02:02:27 5 Q Okay.

6 A We were released in 2005.

7 Q Okay.

8 A Got out, and we were out for a little bit, and then we both
9 went back.

02:02:35 10 Q Did you get arrested at the same time in 2005 or '6?

11 A No. A month apart.

12 Q Okay. And were those arrests also drug-related?

13 A Yes, I think so.

14 Q What -- what offense?

02:02:47 15 A Mine was my DOSA was revoked.

16 Q Okay. And was that based upon violations, not completing
17 treatment --

18 A Um-hmm.

19 Q -- or using again?

02:02:56 20 A Um-hmm.

21 Q Okay. And during that time, you also said Ms. Pesina was
22 also using and sent back to prison as well?

23 A Yep.

24 Q And when were you guys released, the two --

02:03:05 25 A 2007.

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16

1 Q 2007.

2 Around the same time period?

3 A Um, a month -- a month apart maybe? Maybe two months
4 apart.

02:03:15 5 Q Okay. And you had said that you believe Ms. Pesina was
6 then clean from 2007 to 2012; is that correct?

7 A Yes, she was.

8 Q Were you clean between 2007 and 2012?

9 A No.

02:03:26 10 Q And were you then --

11 A I was -- I got clean -- I was clean from 2007 to 2010 --
12 no, 2009. And then, um, when I relapsed, she quit talking to
13 me, and she stayed clean and lived her life. And then we
14 relapsed -- we didn't relapse together. We relapsed around the
02:03:49 15 same time in 2012. But she had stayed clean until 2012; from
16 2007 to 2012, yes.

17 Q And you have a familial relationship through -- as -- were
18 you involved with one of her brothers?

19 A Um-hmm.

02:04:02 20 Q And that -- obviously she has two brothers, right?

21 A Yeah.

22 Q Which brother?

23 A Troy.

24 Q So is that the one -- and where is Troy now?

02:04:10 25 A He's in jail.

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17

1 Q For what offense?

2 A I don't know. I don't talk to him. I haven't talked to
3 him in a long time.

4 Q Okay. It's a federal offense?

02:04:17 5 A No, I don't think so.

6 Q Did --

7 A I don't know. Honestly, I don't know. I don't talk to
8 him.

02:04:27 9 Q Okay. Might have been related to the *Henrikson* case, a
10 homicide that occurred on the South Hill?

11 A I don't know --

12 MR. PECHTEL: Objection, Your Honor. The witness has
13 indicated she has no knowledge about this --

14 A I don't know what --

02:04:36 15 MR. PECHTEL: -- topic.

16 THE COURT: Hold on, everybody. Sustain the objection.
17 Go ahead.

18 BY MS. VAN MARTER: (Continuing)

02:04:42 19 Q During the time that you were involved with Troy Pesina and
20 Monica Pesina, was he also involved with drugs?

21 A Actually, no.

22 Q Was Troy Pesina a drug user at all?

02:05:00 23 A He is -- yes, he is. But him and I, our relationship was
24 never about drugs. I don't think it lasted more than three
25 months. So ...

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18

1 Q Okay.

2 A I think I got pregnant the day he got out of jail, prison.

3 Q So in 2012 when you and Ms. Pesina found each other both in
4 a relapse situation, do you know why Ms. Pesina relapsed after
02:05:16 5 four years of sobriety?

6 A Um-hmm.

7 Q And does it have to do with a personal stress in her life?

8 A Probably.

9 Q Okay.

02:05:24 10 A Her boyfriend, the father of her children, she found him
11 talking to other women, and it was just too much for her.

12 Q And is it your experience, especially when you have a
13 long-time history with somebody and a friendship with somebody,
14 if there are stressors, that that can create a stressor on both
02:05:45 15 of you in terms of a risk of relapse?

16 A Say that again.

17 Q So you have a long-time friendship with Ms. Pesina.

18 A Yeah.

19 Q You've both relapsed together around the same periods of
02:05:55 20 time, correct?

21 A Yes.

22 Q Based upon different life stressors that are going on; is
23 that correct?

24 A I don't think my relapse was -- I -- honestly, my relapse
02:06:05 25 was never because of a life stressor. I had an amazing life. I

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19

1 relapsed because I wanted to; um, because I'm an addict. And I
2 think hers was she just couldn't -- honestly, I think that hers
3 was more stress-induced. I mean, she gave a man her whole life
4 and gave him two kids, and then to find out that he's cheating,
02:06:32 5 I think it stressed her out a lot. Her life was falling apart
6 underneath her feet. I mean, she was doing -- they were doing
7 really well.

8 Q And have you ever known Ms. Pesina to face such substantial
9 drug charges in her history?

02:06:49 10 A No.

11 Q And fair to say that these types of charges are stressful?

12 A Nothing that I don't think she can't, uh, control, or -- or
13 find, you know, um, adequate support to get her through it.

14 Q You had testified that just prior to her being picked up,
02:07:15 15 you had the children or were helping to take care of her
16 children; is that correct?

17 A Yeah.

18 Q Which -- at which point did you have them, which arrest,
19 prior to which arrest, the arrest in June, the arrest in
02:07:29 20 September, or the arrest in November?

21 A The arrest in September, when they were at the -- they got
22 arrested in the black, um, vehicle.

23 Q So when did you first get the kids, then, prior to that
24 arrest?

02:07:43 25 A I got them that day that she got arrested. They surrounded

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20

1 her car. She had picked up my son from school and was going to
2 bring my son and her daughter to my house --

3 Q I thought --

4 A -- because --

02:07:54 5 Q Excuse me, ma'am. I thought you testified that you had the
6 children a month prior to her -- from when she was picked up.

7 A That was about a month prior to this pickup.

8 Q To this pickup.

9 A Yeah.

02:08:02 10 Q Okay. That's what I was just trying to clarify.

11 So you had the children from September until November, the
12 most recent arrest?

13 A Yes.

14 Q And why did you have the children during that time period?

02:08:14 15 A Because she got picked up in September, and then I went and
16 got the kids, and then I just kept them.

17 Q But she bonded out within 24 hours; is that correct?

18 A Um-hmm.

19 Q And why did you keep them after that?

02:08:25 20 A Because she had court dates and stuff coming up that she
21 was having to go to in Spokane.

22 Q Did you know where she went?

23 A What do you mean, do I know where she went?

24 Q When she was released, do you know where she went to stay?

02:08:37 25 A At first, she went to stay at her house. She -- they let

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21

1 her out to come down here.

2 Q But you kept the kids, even after she went back to her --

3 A Yeah, because she was going to have to be having to

4 trans -- go to court dates. She was having to check in, and,

02:08:52 5 um, she was going to have to go to court, so I just told her I'd

6 keep the kids until she got it all -- until she got it all done.

7 Q Okay. When were you aware that she was no longer living at
8 that residence?

9 A Um, I'm not sure, really.

02:09:12 10 Q Was -- did you know if she was aware there were other

11 arrest warrants coming for her?

12 A No, we never -- none of us knew, because otherwise she
13 would have turned herself in or called at least, because she had
14 court in Spokane, and she only showed up for that -- I know

02:09:28 15 about her showing up for court because she would come over to my
16 house. She'd come over to my house a couple times.

17 Q So what court dates did she have to go to for Spokane?

18 A Well, they picked her up for -- when they pulled her over
19 and picked her up and did a search warrant on her house.

02:09:42 20 Q Do you know when those court dates were?

21 A No, I'm not sure of dates. They're not my court dates.

22 Q Did you go with her for those court dates?

23 A No.

02:09:54 24 Q And when did -- I'm sorry. When did you find out that she
25 was no longer living at her house in Richland then?

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22

1 A I'm not sure.

2 Q Do you know where she went after that?

3 A No.

4 Q You still had her kids?

02:10:06 5 A Yeah, I still had her kids.

6 Q Was she in communication with her children?

7 A Yes.

8 Q But you --

9 A On the -- mostly by phone.

02:10:13 10 Q But you didn't know where she went?

11 A I -- we don't know where she was staying.

12 Q Do you know if she was even in the same city?

13 A Not sure.

14 Q Do you know who Mr. Carter is?

02:10:23 15 A Yes.

16 Q Who is Mr. Carter?

17 A Her boyfriend.

18 Q And how long has she been with Mr. Carter?

19 A I'm not sure.

02:10:32 20 Q Do you know if Mr. Carter struggles with drugs?

21 THE WITNESS: Is this even -- does this matter?

22 THE COURT: You need to answer her questions.

23 A Um, yes, I'm -- yes, I guess. I don't know. I know that's
24 what he got picked up on, but I don't really know him like that.

25

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1 BY MS. VAN MARTER: (Continuing)

2 Q Okay. And do you know if she was with Mr. Carter during
3 this time period when you had her children?

4 A I'm pretty sure she was.

02:10:54 5 Q But you don't know where they were staying?

6 A No.

7 Q And do you know why they left the area?

8 A No.

9 Q Have you ever --

02:11:04 10 A We --

11 Q Have you ever had occasion --

12 A I'm not even sure that they left the area.

13 Q Have you ever had occasion to take possession of her kids
14 before?

02:11:14 15 A Have I ever had to take possession of her kids?

16 Q Had occasion to take possession of her kids before?

17 A Say --

18 Q Have you ever had -- have you ever been in charge of her
19 kids before that time period?

02:11:24 20 A No.

21 Q Where did the kids typically stay?

22 A With her.

23 Q Do they also stay or would they also stay with the aunt,
24 where they are now?

02:11:32 25 A They would spend weekends there, I know that, because my

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24

1 kids have gone over there with them on the weekends.

2 Q And after her arrest in November in Dixie, Washington, who
3 came and got the kids?

4 A They were with Katie.

02:12:04 5 Q They were already with Katie?

6 A Um-hmm.

7 Q And who is Katie?

8 A Their aunt.

9 Q Okay. And that's the same aunt that we previously referred
02:12:12 10 to, just for the record?

11 A Yes.

12 Q Okay. And when did the aunt come get the kids?

13 A On Halloween. Actually, they went to their aunt's house on
14 Halloween -- no. Actually, they went to their aunt's house
02:12:26 15 on -- I'm trying to think of what day Halloween was on.

16 Q You can just give an estimate.

17 A It was on a weekend, because they went to their aunt's
18 house on a Monday, I want to say, or Sunday -- the Sunday after
19 Halloween is when they went to their aunt's house.

02:12:47 20 Q Okay. And why did the aunt come get the kids at that
21 point?

22 A Because she's their blood aunt and I am not.

23 Q My question: Was there an arrangement made between
24 Ms. Pesina and her aunt that she would come get the children?

02:13:00 25 A Yes.

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1 Q And that was a communication that you were not a part of?

2 A Yes, I was.

3 Q Okay. And --

4 A I mean, I knew that she was going to come get the kids,
02:13:10 5 yes, absolutely.

6 Q And why is it that the kids were not going to stay with
7 you?

8 A Because I couldn't financially take care of them, and she
9 can. And, um, she's their blood aunt, and she can make legal --
02:13:20 10 you know, she can make decisions. I already have three children
11 of my own.

12 Q And you indicated that you obviously continue with several
13 different aftercare options, to include church and community
14 involvement; is that correct?

02:13:34 15 A Yes.

16 Q Are you also employed?

17 A Right -- right this second?

18 Q Yes.

19 A No.

02:13:40 20 Q Okay.

21 A I do side -- I do side jobs cleaning houses.

22 Q Okay. And you also attend some aftercare meetings as well?

23 A Um-hmm.

24 Q Okay. And currently, right now, would you consider
02:13:54 25 Ms. Pesina in need of drug treatment?

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1 A Yes.

2 Q To assist her in trying to maintain --

3 A I think that she -- I think outpatient would do her an
4 amazing job, would be amazing. She would do amazing in it.

02:14:09 5 Q Do you know how many times she's attended drug treatment in
6 the past?

7 A I'm pretty sure just one time.

8 Q It could be more?

9 A I'm pretty sure it's just one.

02:14:19 10 Q Okay. Did you attend the same treatment with her --

11 A No.

12 Q -- at the same time?

13 A No, we didn't attend it at the same time.

14 Q And do you know -- and obviously -- was that -- do you know
02:14:29 15 what time period that was, where she attended treatment
16 previously?

17 A I'm pretty sure when she released from Tri-Cities work
18 release she was doing treatment. That's when.

19 Q Do you know what year that was?

02:14:41 20 A 2007.

21 Q Okay. And right -- during the time right before she had
22 her stretch of sobriety?

23 A She -- yeah, she had -- yeah.

24 MS. VAN MARTER: Okay. If I could just have a moment,
02:14:53 25 Your Honor.

1 (Counsel conferring.)

2 MS. VAN MARTER: I don't have any other questions, Your
3 Honor. Thank you.

4 THE COURT: Any other questions, Counsel?

02:15:13 5 MR. PECHTEL: Just a few, Your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. PECHTEL:

9 Q Ms. Samorano, do you have any reason to believe that Monica
02:15:20 10 has lived outside the state of Washington at any time?

11 A She's never been outside of Washington.

12 Q Lived outside the state of Washington?

13 A She's never lived outside the state of Washington, I
14 don't -- nope, she never has.

02:15:32 15 Q Has she ever discussed international travel with you?

16 A No.

17 Q To your knowledge, does she have a passport?

18 A No.

19 Q We've indicated --

02:15:42 20 A Sorry.

21 Q -- or you've mentioned that her children are living with
22 her aunt.

23 Do you know where her aunt resides?

24 A Yes.

02:15:48 25 Q And where is that?

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1 A Um, in Finley.

2 Q Here in the Tri-Cities area?

3 A Yes. And her son lives in the Seattle area, her older son
4 and her grandchild.

02:16:01 5 Q Have you ever known Monica to be violent?

6 A No.

7 Q Okay. Have you ever seen her have a firearm?

8 A Never.

9 Q Ever seen her with a tactical knife, like a switchblade or
02:16:16 10 something like that?

11 A No.

12 Q Okay.

13 A She's the most soft-spoken person you'll ever meet in your
14 life.

02:16:27 15 MR. PECHTEL: No further questions.

16 THE COURT: Any additional questions, Ms. Van Marter?

17 MS. VAN MARTER: No, Your Honor.

18 THE COURT: May this witness be excused?

19 MR. PECHTEL: She may, Your Honor.

02:16:34 20 THE COURT: Ms. Van Marter?

21 MS. VAN MARTER: Yes, Your Honor.

22 THE COURT: All right. Thank you very much. You're
23 excused.

24 THE WITNESS: Thank you.

02:16:49 25 THE COURT: Any additional witnesses, Counsel?

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1 MR. PECHTEL: One more, Your Honor. We would call
2 Deeann Goorich. Excuse me. It's Goodrich, not Goorich. I
3 misspelled it on the paper.

4 THE COURT: Counsel, I'm not going to correct a single
5 person about mispronunciation.

6 (Witness approached.)

7 THE COURT: Right up here.

8 THE COURTROOM DEPUTY: Hi. If you'll just go to the
9 corner right there and turn and face me and raise your right
10 hand.

11

12

13 DEEANN GOODRICH,
14 called as a witness on behalf of the Defendant, having first
15 sworn or affirmed, testified under oath as follows:

16 THE WITNESS: Yes.

17 THE COURTROOM DEPUTY: Okay. Please have a seat.

18 The chair does not roll; you'll have to pull it in. And
19 then speak directly into the mic. There's water. And when
20 you're comfortable, please state your first and last name, and
21 spell them both for the record.

22 THE WITNESS: My name is Deeann Goodrich. It's spelled
23 D-E-E-A-N-N; Goodrich, G-O-O-D-R-I-C-H.

24

25

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1 DIRECT EXAMINATION

2 BY MR. PECHTEL:

3 Q Good afternoon, Mrs. Goodrich -- Ms. Goodrich. Thank you
4 for joining us.

02:18:11 5 Can you let the judge know what city and state you reside
6 in?

7 A Um, in Kennewick, Washington.

8 Q And we're here about the matter about Monica Pesina.

9 Do you personally know Monica Pesina?

02:18:23 10 A Um, I personally don't.

11 Q Okay.

12 A Um, my boss did interview her; Jason Bliss has interviewed
13 her and, um, did an intake on her.

14 THE COURT: Jason who? I'm sorry?

02:18:35 15 THE WITNESS: Bliss.

16 THE COURT: Bliss. Thank you.

17 BY MR. PECHTEL: (Continuing)

18 Q But you've never personally met her before?

19 A No.

02:18:40 20 Q What is your association with the Oxford House system?

21 A I am the Oxford House housing navigator slash outreach
22 worker for Benton/Franklin counties.

23 Q What does that require you to do?

24 A I currently am funding -- doing housing funding for both
02:18:59 25 Benton and Franklin Counties to help people like Mrs. Pesina get

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1 into housing.

2 Q And how many hours a week does that occupy of your time?

3 A Uh, roughly 32.

4 Q And you're employed by the Oxford House --

02:19:12 5 A Yes.

6 Q -- system?

7 How long have you been doing that?

8 A Um, I just recently hired, but I've been involved with
9 Oxford for about five years.

02:19:19 10 Q Okay. Are you familiar with the history of the Oxford
11 House system?

12 A I am.

13 Q When did it originate?

14 A Um, 1975. Yeah.

02:19:28 15 Q And what are Oxford Houses?

16 A Oxford Houses are self-sufficient, self-supporting recovery
17 houses. Um, in these houses, these people are required to do
18 random UAs. It is an open-door policy, but we do have a, uh --
19 I believe it's a 97 percent if you stay, you're most likely to
02:19:50 20 stay clean.

21 Q Do you have other individuals who are pending trials --

22 A I do.

23 Q -- residing in Oxford Houses?

24 A I do. I have several in different houses, and several who
02:20:01 25 have come and stayed and then went and did -- followed through.

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1 Q Now, in Ms. Pesina's case, have you determined whether
2 there is -- one of the Oxford Houses has availability for her to
3 reside there if she were to be released?

4 A If she was to be released, I do have an address, a bed, and
5 a source of funding waiting for her.

02:20:20 6 Q And how long would it take for that to come into effect, if
7 she were released? Would it be same day?

8 A Yeah, same day.

9 Q What kinds of things, besides random UAs, is Ms. Pesina
10 required to do if she is going to stay in an Oxford House?

02:20:42 11 A She's required to attend mandatory house meetings. Our
12 houses are ran democratically, so every person has a voice in
13 that house. She's required to go to three NA or self-help
14 meetings a week. Um, she's required to just be a part of the
02:21:00 15 house and hold herself accountable long as -- as well as her
16 roommates.

17 Q If she was not in compliance with those requirements, what
18 would happen?

19 A Um, she would not be in compliance -- well, okay, I'm going
02:21:12 20 to be honest with you: It depends on what "not compliant" it
21 is. If it's disruptive behavior, then we would personally
22 remove her from the house and put her in another house. If she
23 was to pass a dirty UA, then she -- we would probably make
24 contact with the right people.

02:21:29 25 Q And when you say "the right people," you would contact the

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1 supervising probation officer?

2 A Yes. Yeah, her PO, her parole officer.

3 Q And if that was something that the judge required, you guys
4 would not have a problem doing that?

02:21:43 5 A No, not at all.

6 Q And if she weren't to attend the required self-help
7 meetings three times a week, what would happen?

8 A Um, she would go on what we call a 30-day contract, and
9 what that means is she has 30 days to rectify the behavior.

02:21:56 10 Q And if she doesn't rectify it, what happens?

11 A Then she will probably lose her bed, and we would have to
12 contact her parole officer.

13 Q You mentioned 97 percent success rate?

14 A We do.

02:22:09 15 Q Okay. And when you quote that number, what are you
16 referring to specifically?

17 A Um, we have -- well, all the houses nationwide. So it's a
18 statistic that we had done, that 97 percent of people who move
19 into Oxford and stay for a year are sober for the remainder of
02:22:27 20 the time.

21 Q So we're talking about a shorter period of time before
22 Ms. Pesina goes to trial.

23 Are you aware of any statistics for a shorter period of
24 time --

02:22:36 25 A I don't. I don't know.

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1 Q So the best information that you have is if you're in
2 Oxford for a year --

3 A For a year, then you're most likely, yeah.

4 Q -- 97 percent likely to --

02:22:43 5 A Yeah.

6 Q -- remain sober?

7 A Yeah.

8 MR. PECHTEL: No further questions. Thank you.

9 THE WITNESS: Yep.

02:22:53 10 THE COURT: Any additional questions?

11

12 CROSS-EXAMINATION

13 BY MS. VAN MARTER:

14 Q Good afternoon, Ms. Goodrich.

02:22:58 15 You said that you've been involved with the Oxford House
16 here in Kennewick for the last five years?

17 A In both counties.

18 Q In both counties.

19 And what types of positions have you held with the Oxford
02:23:07 20 House?

21 A Um, I personally myself lived in an Oxford House for
22 11 months. I've held state positions as alumni coordinator;
23 I've held all the chapter positions as pres -- all -- most of
24 those I've helped in; and now, like I said, I'm staff.

02:23:24 25 Q And so you're familiar, then, with the inner workings of

1 the Oxford House not only from a managerial but from a personal
2 experience?

3 A Yes.

4 Q Are the Oxford Houses -- you mention a lot about self --
02:23:38 5 self-regulation, self-policing.

6 So is it really designed to be left up to the individual
7 who is at the Oxford House to make sure that they participate
8 and get the most out of the experience at Oxford House?

9 A Ultimately it is up to the person to want it. But Oxford
02:23:58 10 House is group living, so our roommates are there to encourage
11 us to do better for ourselves also.

12 Q And at Oxford Houses there -- there is no security; is that
13 correct?

14 A There's not. It's an open-door policy.

02:24:09 15 Q And so individuals can come and go, and there's no
16 regulation or checking in or stopping them --

17 A So they're only allowed three days out a week. Um, and
18 there is curfews, and each house is different on curfew times on
19 that.

02:24:26 20 Um, if and when she is accepted, she will go on a 30-day
21 blackout, which will have no visitors, nothing to that effect
22 for the first 30 days.

23 Q But she is still free to walk out the door if she --

24 A She is still free to walk out.

02:24:42 25 Q And I know that you work with a lot of individuals who are

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1 in both pre and post --

2 A Yeah.

3 Q -- conviction status with the courts. Is that correct?

4 A We do.

02:24:50 5 Q Okay. And this is a circumstance, obviously, of
6 preconviction or -- or preresolution of the case, so you'll be
7 working with United States Probation.

8 A Right.

9 Q Have you worked with United States Probation in the past?

02:25:02 10 A We have. Jason Bliss has, yeah.

11 Q Jason has? I'm sorry?

12 A Oxford House as a whole has, I guess is the answer, yeah.

13 Q Okay. And you had indicated that there are circumstances
14 where you report information to Probation; is that correct?

02:25:15 15 A Yes.

16 Q What kinds of circumstances do you report?

17 A Um, so like I said, UAs. Um, if she was not to come home
18 or check in, that would be something that we would have to
19 report; or changing of houses, because sometimes personalities
02:25:30 20 just don't click in houses so we change houses. So things like
21 that do have to be reported to the parole officer.

22 Q And what happens if drugs are introduced into the Oxford
23 House?

24 A Um, she's got to go. I mean --

02:25:45 25 Q Are the police called?

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1 A Yes.

2 Q Okay. Are they allowed to search --

3 A They can.

4 Q -- for the presence of narcotics?

02:25:51 5 A Yep.

6 Q And you were asked a lot about some success rates. There
7 are some good success rates for people who chose to stay for a
8 period of time --

9 A Right.

02:26:01 10 Q -- correct?

11 Obviously there are struggles for individuals who do not
12 choose to stay for the longevity of the Oxford House; is that
13 true?

14 A True.

02:26:10 15 Q And do you frequently come across individuals who are
16 nonparticipant or violative of the rules of the Oxford House?

17 A Yeah. I mean, it's -- yeah, you're going to find somebody
18 who doesn't want it.

19 Q And I was just going to say, is that predominately because
02:26:22 20 that person either does not want to or is not ready to accept --

21 A To accept --

22 Q -- sobriety?

23 A Yeah.

24 Q And have you had occasion to work with individuals who are
02:26:31 25 released and potentially facing substantial sentences?

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1 A Yes.

2 Q And is that considered to be an additional stressor that's
3 addressed within the Oxford House community?

4 A It's not, because we believe that everybody has a right to
5 sobriety.

6 Q No, I'm sorry. I think you misunderstood my question.

7 Is the possibility of facing jail time, is that a common
8 stressor that people have in trying to address their sobriety,
9 an outside stressor?

10 A Yeah.

11 Q As well as family stresses? All those outside stresses can
12 impact one's sobriety; is that correct?

13 A Sobriety, yep.

14 Q And Oxford House is designed to have a group setting to
15 address those?

16 A Yep.

17 Q And the UAs, do you guys send the UAs off to the lab?

18 A We have instant ones. But if something was to happen, we
19 do have accessible to send in.

20 Q Does that include detecting for the presence of fentanyl?

21 A Yes.

22 Q And are you guys able to do that on regular basis? I know
23 there's a --

24 A Yes, our InstaCups actually do that.

25 Q Okay. And is that determined by the intake and

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1 self-reporting of the individual as to which controlled
2 substances you will test for?

3 A I don't understand.

4 Q So when individuals come in for intake --

02:27:45 5 A Um-hmm.

6 Q -- they obviously self-disclose which particular drug of
7 choice or issue they may have.

8 A Right.

9 Q Is that correct?

02:27:52 10 A Yes.

11 Q And then they're ordered to produce UAs?

12 A Right.

13 Q Who determines which -- is it run for the whole panel --

02:28:04 14 A It's a 16-panel UA. So they're ran for the whole 16
15 panels.

16 Q And that includes fentanyl?

17 A Yep.

18 MS. VAN MARTER: I don't have any other questions, Your
19 Honor.

02:28:09 20 THE COURT: Any additional questions?

21 MR. PECHTEL: I just have a small series of questions
22 that I forgot to ask earlier.

23

24

25

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REDIRECT EXAMINATION

BY MR. PECHTEL:

Q So Ms. Pesina has several children.

Does the Oxford House system allow children to reside with their parents, in certain circumstances?

A Yes. The house she is going into, she will be able to have her children with her at that time.

Q Living full time with her?

A Yep, if that's an option.

MR. PECHTEL: No further questions.

THE WITNESS: Yep.

THE COURT: Any additional questions?

MS. VAN MARTER: No, Your Honor.

THE COURT: May this witness be excused?

MR. PECHTEL: Yes, Your Honor.

MS. VAN MARTER: That's fine, Your Honor.

THE COURT: Thank you very much for your testimony.

Any additional witnesses?

MR. PECHTEL: Not from the defense, Your Honor.

THE COURT: Okay. Any witnesses from the Government?

MS. VAN MARTER: Your Honor, I guess I -- I think the way that Mr. Pechtel was trying to break down in terms of the presumption, we had already proffered information which the Court accepted and incorporated into her order.

THE COURT: Correct.

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1 MS. VAN MARTER: So if the -- having not done a
2 detention appeal before Your Honor, we do have a witness
3 available, but it was not our intention to present substantive
4 evidence at this time, unless there's additional information
5 that should arise from the argument.

6 THE COURT: No, there isn't. Thank you.

7 MS. VAN MARTER: Thank you.

8 THE COURT: You know, I -- one of the issues, of course,
9 is whether or not there is a rebuttable presumption. Again,
10 this is a case in which the defendant faces a mandatory minimum
11 sentence of ten years, so I guess there would -- that requires
12 the defendant to produce that information to establish that
13 rebuttable presumption.

14 And here I guess I would hear from you, Mr. Pechtel, if
15 you would argue that point.

16 MR. PECHTEL: Thank you, Your Honor.

17 I'm sure the Court has had full opportunity to review
18 the briefing that's been filed. I would just point the Court to
19 our analysis in our reply on Pages 3 and 4. The rebuttable
20 presumption in drug trafficking cases, Congress enacted that law
21 because there were several factors that were common in large
22 drug trafficking cases: Specifically, drug traffickers were
23 engaged in a business of drug trafficking, which increased their
24 risk of pretrial recidivism of continuing that business; and,
25 second, that large-scale drug traffickers often had the

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1 financial resources and international connections in order to
2 flee the country. And sources for those congressional findings
3 are cited on Page 3 of our reply.

4 In this case, neither of those factors are at play.
02:31:20 5 First of all, there's no indication that Ms. Pesina is connected
6 to any sort of international organization, has ever traveled
7 outside the country, has a passport, or has any sort of
8 international connections. Second, there's no evidence before
9 the Court that she is independently wealthy or has any sort of
02:31:39 10 financial resources that would easily allow her to flee the
11 country.

12 Second [sic], although it's alleged in this case that
13 she was engaged in a pattern of drug trafficking, assuming,
14 arguendo, that that can be established, we would proffer to the
02:31:56 15 Court that over the course of two months of her incarceration,
16 any business that she may have had would have substantially
17 deteriorated because addicts need their drugs, and they would
18 have found alternative sources of supply in the intervening
19 period.

02:32:14 20 Second, the need for -- the financial need to engage in
21 drug trafficking is replaced by the prospects of employment.
22 And we provided the Court with a letter from an employment
23 agency, and I can't recall -- Compass Career Solutions, which is
24 Exhibit A to our reply, indicating that Ms. Pesina qualifies for
02:32:41 25 services through their agency, and that they'll be able to get

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1 her full-time employment.

2 In addition to that, her financial resources in order to
3 get started when she's on the outside, her brother is willing to
4 help her get back on her feet, which was indicated in the
02:32:57 5 Pretrial Services report.

6 So the two fundamental considerations that Congress had
7 in creating the rebuttable presumption aren't really present in
8 this case.

9 In addition to that, there are a number of factors that
02:33:10 10 indicate that her risk of recidivism on pretrial release is
11 relatively low, and that she would appear for court as directed
12 by the Court. Those factors were listed in -- on Page 5 of our
13 original motion, and they include things such as the fact that
14 she is a citizen of this country, and she has lived in southern
02:33:39 15 Washington her entire life; she's traveled outside the state on
16 very rare occasions and lacks a passport; her two minor children
17 currently reside in the Tri-Cities area, so if she were to flee
18 the jurisdiction, she would be abandoning her family, become a
19 fugitive, and essentially give up any ongoing relationship she
02:33:58 20 might ever have with her children again; she -- she does not
21 have a history of failing to appear for court, at least I'm not
22 aware of any proffer from the Government that she has. She
23 didn't flee Washington after the June 2019 traffic stop or the
24 September arrest. She has no history of violence, and she has
02:34:20 25 no history of firearm violations.

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1 One of the things that the Government indicates in their
2 proffers in their response is that there were firearms found
3 co-located with Ms. Pesina over the course of some of these
4 arrests. But I would note for the Court that the one firearm
02:34:37 5 located in the June arrest, this incident, the charged incident,
6 was found on the person of Nick Carter, not just loose in the
7 car. The October arrest involved him alone possessing a
8 firearm. Ms. Pesina isn't even related to that incident, at
9 least the police reports don't indicate that she was involved at
02:34:56 10 all. And so there's no indication that she possessed firearms.
11 And we heard testimony from Ms. Samorano that she has never seen
12 Monica possess firearms or other dangerous weapons.

13 All of this is buttressed by the fact that she is an
14 addict and was addicted during the relevant period to -- and
02:35:17 15 using drugs heavily, which clouded her judgment. Obviously over
16 the past two months she's been incarcerated and has not been
17 using narcotics, and her ability to rationally make decisions
18 has improved as a result of that.

19 THE COURT: I anticipate, Counsel, one of their
02:35:37 20 arguments is going to be that month period of time where she
21 was -- they would argue, I presume, that she was gone, and she
22 knew that, they would argue, that the Government was intending
23 to look for her.

24 MR. PECHTEL: Yes, Your Honor, I see that proffered in
02:35:57 25 the Government's briefing. From reviewing the discovery, all I

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1 could find is that a confidential source, an unknown source
2 indicated to law enforcement that that might be the case, and
3 that's the sole basis for their factual assertion. I don't have
4 any knowledge of who that source is, what their credibility is,
02:36:14 5 or what specifically they told law enforcement or what the
6 factual basis they had for making that representation to law
7 enforcement was. It could have been pure speculation on the --
8 on the confidential source's part, given the circumstances. And
9 so we just have really no basis to give any weight to that
02:36:34 10 proffer, Your Honor, without having the confidential source come
11 testify as to why he or she knew that that had occurred. And
12 just the fact that she left the area doesn't corroborate the
13 idea that --

14 THE COURT: Well, part of it, though, Counsel, is the
02:36:52 15 fact that she left the area.

16 Isn't the argument that not only that, but that she left
17 her children in the care of somebody else and had only phone
18 contact with them? Isn't that concerning?

19 MR. PECHTEL: I don't think so, Your Honor, given the
02:37:13 20 fact that my client is an addict, and when an addict goes on a
21 spree, it's very reasonable for them to leave their children.
22 And I can think from my personal background of instances, not me
23 personally but people that I know, where if an addict or an
24 alcoholic goes on a spree, that they leave their children with
02:37:36 25 somebody else to take care of the children so that they're free

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1 to do whatever they feel like doing. So I don't see that
2 necessarily corroborative of the intentional fleeing from the
3 jurisdiction or -- you know, if she were -- if she was aware of
4 a federal arrest warrant, you would think that maybe she would
02:38:00 5 flee a little bit further or stop the trafficking of drugs, not
6 just relocate 80 miles to the east and continue to traffic
7 drugs. It just doesn't make a lot of sense. If that's -- her
8 intention is to not get caught, it just -- I don't follow the
9 logic there, I guess, Your Honor.

02:38:21 10 So just -- just to wrap up, she has a plan to address
11 the addiction concerns, which includes living in a stable group
12 housing situation where there will be incredible accountability
13 from her peers, along with the peer support from her best friend
14 Lena, who has been clean and sober for the past three years.
02:38:41 15 Obviously there's a condition of release that she not
16 communicate with felons, but we would ask that that requirement
17 be lifted specifically with respect to Lena because we think
18 that her contact with Lena would be far more beneficial than
19 detrimental, given the fact that Ms. Samorano has been clean and
02:39:04 20 sober for the past three years and has been through this process
21 and knows what it takes to get -- to get clean.

22 And so for those reasons, we feel that we've met our
23 minimal obligation, as was quoted in our reply, minimal
24 obligation to produce some evidence to indicate that the
02:39:23 25 presumption should be overcome. And the case law indicates that

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1 if the presumption is overcome, it doesn't fall away; the Court
2 can still consider those factors in rendering an ultimate
3 decision. But we believe that we've overcome the presumption,
4 and then the burden then shifts back to the Government to prove
02:39:41 5 by clear and convincing evidence or a preponderance of the
6 evidence one of the two relevant statutory tests, whether she
7 would appear for court or be a danger to the public.

8 So for those reasons, we would ask that you find that
9 the presumption has been overcome in this case, and we can
02:39:55 10 proceed to argument on the underlying detention issue.

11 Thank you.

12 THE COURT: Go ahead.

13 MS. VAN MARTER: Thank you, Your Honor.

14 Respectfully, the United States' position is that --
02:40:12 15 that Judge Magistrate Dimke was presented with the same series
16 of facts and arguments as presented to this Court. I know this
17 Court has the ability for a *de novo* review, but I would argue,
18 even with the supplemental information provided, it actually
19 just gives greater weight to what Judge Dimke's findings
02:40:29 20 previously were and concerns that Ms. Pesina has not overcome
21 the presumption of detention in this matter.

22 I think that some of the most important information
23 before the Court as we talk about recidivism and, therefore,
24 risk to the community, risk of non-supervisability, in this case
02:40:49 25 we can only look to the defendant's own actions. We don't have

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1 to speculate. We don't have to look to statistics. And in this
2 particular case, the defendant has not only repetitively been
3 arrested and intervened by law enforcement under serious
4 circumstances but, arguably, the conduct has escalated by not
02:41:10 5 only type and quantity of narcotic, but the inclusion of
6 fentanyl-laced pills.

7 And I understand defendant's attempt to parse out
8 arguments that the guns may be in the possession of her
9 boyfriend, but the boyfriend who is engaged in drug trafficking
02:41:27 10 with her sitting right next to her or living with her during
11 each occasion.

12 There is one occasion where he was by himself, after
13 they had bonded out from the September incident in Spokane. But
14 the other two occasions, where there were distribution
02:41:41 15 quantities of a multitude of controlled substances, large
16 amounts of U.S. currency, scales, and other indicia of
17 distribution, multiple cell phones, Ms. Pesina was right with
18 him.

19 The concern of the United States is raised by this
02:41:55 20 Court, and I think somewhat enhanced by, certainly, the good
21 intentions of her friend. After the arrest in September, which
22 was a Spokane investigation that led them to multiple
23 residences, to include a residence here in Richland, and the
24 location of numerous amounts of evidence as located -- as noted
02:42:16 25 by the Government in its proffer, previously by Judge Dimke in

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1 her findings, and again in our response, they bonded out quickly
2 and left the area. It is still another town, an association
3 with an individual that was not part of the other ongoing
4 investigations, which makes it difficult for law enforcement,
02:42:34 5 who had obtained arrest warrants for both of them at that point
6 in time and had been actively looking for them at all of their
7 normal locations, to include the residence that she supposedly
8 returned to upon bonding, and they were not there.

9 It does further corroborate the source's information
02:42:50 10 that she was fleeing the area when, in fact, she did leave the
11 area; did not tell her friend, who had her children, where she
12 was at; and the friend then believes that she's doing so to
13 attend court in Spokane, which did not exist at the time.

14 All of those factors seem to corroborate the fact that
02:43:10 15 she simply left the area, knowing she'd just been caught over
16 the last two months with large quantities of narcotics and
17 firearms, knowing that more arrest warrants were coming.

18 And it is even more concerning, and should be concerning
19 to this Court, that even in spite of that, whether she was
02:43:27 20 actively using drugs or not, they were in possession of large
21 quantities of methamphetamine, heroin, fentanyl-laced pills, and
22 loaded firearms.

23 All of those factors combined, there is -- in the United
24 States' respectful opinion, there is no way that she can
02:43:45 25 overcome the presumption of detention, not only to the

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1 dangerousness, but also the risk of flight. And the risk of
2 flight is not dependent upon access of cash, although there is
3 evidence that there were quantities of cash seized from her
4 during each of the occasions, and it is also not dependent upon
02:44:01 5 evidence of international travel. It is the risk of the
6 continuous behavior, risk to the public, based upon the totality
7 of the behavior and the escalation of that behavior.

8 It is also of concern to the United States that the
9 proposed release is going to be dependent upon Ms. Pesina to
02:44:23 10 actually receive the treatment. And I would direct the Court to
11 the previous Pretrial Services reports and reports of family
12 members who have known Ms. Pesina throughout the years of
13 struggle, even in the history that is recounted by her best
14 friend, when times of stress, even stress just involving an
02:44:41 15 intimate relationship, not just facing a ten-year mandatory
16 minimum sentence, has caused Ms. Pesina to relapse, and to
17 relapse in such a way that has led her back to prison on drug
18 charges; and in this case, facing more substantial drug charges
19 based upon evidence of drug trafficking behavior.

02:45:00 20 It is also of concern that in such short turnaround she
21 was able to obtain those types of supplies repetitively, even
22 after being arrested by law enforcement and released.

23 So, given the totality of circumstances, we do not
24 believe that Ms. Pesina can overcome that presumption.

02:45:17 25 THE COURT: All right. Thank you.

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1 MS. VAN MARTER: Thank you.

2 THE COURT: Anything else, Mr. Pechtel?

3 (Counsel conferring.)

4 MR. PECHTEL: A moment, Your Honor.

02:45:24 5 THE COURT: Sure.

6 (Counsel and defendant conferring.)

7 MR. PECHTEL: Just a few clarifications, Your Honor.

8 First of all, Ms. Pesina did not bond out of the Spokane
9 case. She was released on her personal recognizance.

02:45:50 10 THE COURT: Okay.

11 MR. PECHTEL: And I did provide a citation to a website,
12 which the Court can look at, and it indicates that the
13 prosecutor declined to file charges in that case within the week
14 following her arrest. So there was no active case in -- going
02:46:03 15 on in Spokane.

16 The other issue that the Government raised that I
17 thought I should at least respond to is this issue that
18 Ms. Pesina should be held accountable for the actions of her
19 associate, Nick Carter. If she were to be released by the
02:46:19 20 Court, obviously Mr. Carter is detained at the moment, and
21 unless something changes, he would continue to be detained, and
22 so any risk that she would reassociate with him is obviously
23 nonexistent so long as he is detained pending the trial in this
24 case.

02:46:37 25 And then lastly, this is something that I've run across,

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1 having done several of these detention hearings in front of the
2 magistrate court: I think that we are starting to conflate the
3 issue of the presumption of detention with the ultimate question
4 of whether there's clear and convincing evidence of
02:46:56 5 dangerousness --

6 THE COURT: And I'm trying not to do that, Counsel, but
7 there has to be some evidence to establish -- right? -- that --
8 and to overcome that presumption, and that evidence you've
9 presented in the form of the testimony today by Ms. Samorano and
02:47:18 10 the information from Ms. Goodrich. But that's still a
11 requirement, though. And I'm not -- I'm having trouble with
12 that.

13 MR. PECHTEL: Your Honor, I would just -- I would argue
14 to the Court that it's a minimal obligation. I cited the Third
02:47:34 15 Circuit case that says it's a minimal -- it's a burden of
16 production. It's not -- we don't even have to establish by a
17 preponderance of the evidence that she doesn't pose these risks.
18 We just have to produce the evidence that, absent contrary
19 evidence from the Government, the Court can look at that
02:47:53 20 evidence and say prima facie that's sufficient to overcome the
21 presumption. That's what I understand the burden of production
22 to be, is that the Court looks at what the defendant presents
23 without contrary evidence being presented by the Government.
24 But perhaps that's my misunderstanding of what a burden of
02:48:09 25 production is.

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1 In any case --

2 THE COURT: Let me hear from the Government on that
3 point.

02:48:20 4 MS. VAN MARTER: Your Honor, the production by the
5 defense is not in a vacuum of all the facts and circumstances
6 which support detention. So in the presumption of detention,
7 the presumption is invoked based upon the nature of the charges.
8 The United States then can present to the Court what the nature
9 of the charges are, in addition to the fact that it evokes the
02:48:38 10 mandatory minimum offense.

11 THE COURT: Right.

12 MS. VAN MARTER: They then have the burden of production
13 to rebut the nature of offense which invokes the presumption.

14 So our argument here is although they presented
02:48:49 15 information, the nature of that information presented does not
16 rebut directly the nature of the offense which presumes the
17 detention so much so to overcome.

18 And I think the Court is correct; in the separation of
19 the facts, it's difficult because part and parcel of that is the
02:49:06 20 nature of the offense itself.

21 THE COURT: Right.

22 MS. VAN MARTER: And so I don't think it's -- and just
23 because he presents some evidence, that doesn't kick it to the
24 second inquiry, in the United States' argument.

02:49:19 25 THE COURT: Okay. Mr. Pechtelt, I stopped you as you

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1 were moving on to a second point, so ...

2 MR. PECHTEL: I think I made the points I wanted to
3 make, Your Honor.

4 THE COURT: Okay. The Court finds that there is a
02:49:38 5 rebuttable presumption under 18 U.S.C. Section 3142(e) (3)
6 because the defendant has indicated -- excuse me -- because the
7 defendant was indicted for an offense with a maximum sentence of
8 imprisonment of ten years or more under the Controlled Substance
9 Act.

02:50:01 10 Frankly, I don't find that the defense has produced
11 sufficient evidence to rebut that presumption. The Government
12 has shown -- in addition, the Government has shown by clear and
13 convincing evidence that there is no set of conditions or
14 combination of conditions of release that will reasonably assure
02:50:21 15 the safety of any of other persons in the community, and has
16 shown by a preponderance of the evidence that no condition or
17 combination of conditions of release will reasonably assure the
18 defendant's appearance as required. As such, the motion will be
19 denied.

02:50:40 20 I will note that of special concern, frankly, was that
21 time in between that -- that month-long time, as testified by
22 Ms. Samorano, where the defendant was not providing the
23 information where she was at and she had left her children with
24 an individual. I find that very concerning, and not indicative
02:51:12 25 of someone who would return to a court hearing or -- frankly,

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1 would flee. So the Court is going to deny the motion.

2 Counsel, I'm not sure when we're set for pretrial, but
3 I'm sure we'll -- maybe you all know.

4 MS. VAN MARTER: I'm not sure.

02:51:40 5 Are we in -- and just to let the Court know, I
6 anticipate that there will be another indictment presented with
7 respect to Ms. Pesina; I didn't want any of the parties or the
8 Court to be surprised. Hopefully that will get taken care of
9 prior to that next pretrial conference.

02:51:56 10 THE COURT: Very well.

11 Anything else we need to address today?

12 MR. PECHTEL: Not from the defense, Your Honor.

13 THE COURT: All right. Thank you for your
14 presentations, and that will conclude this matter. Thank you.

02:52:08 15 THE COURTROOM DEPUTY: Please rise.

16 Court is adjourned.

17 (Hearing concluded at 2:52 p.m.)

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C E R T I F I C A T E

I, KIMBERLY J. ALLEN, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Richland, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 26th day of February, 2020.



Kimberly J. Allen, CRR, RMR, RPR, CCR(WA)
Washington CCR No. 2758
Official Court Reporter
Richland, Washington